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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Gary L. Wagoner,

10 Plaintiff,

11 v.

12 UnitedHealthCare,

13 Defendant.
14

No. CV-22-00827-PHX-DJH

ORDER

15 Defendant UnitedHealthCare (“Defendant”) has filed a Motion to Dismiss *pro se*
16 Plaintiff Gary L. Wagoner’s (“Plaintiff”) Complaint (Doc. 5). Plaintiff filed a Response in
17 Opposition and a Motion for Default Judgment (Doc. 8)¹, and Defendant filed a Reply
18 (Doc. 10). The Court must now decide whether Plaintiff’s state law claims for breach of
19 contract and unjust enrichment are preempted by Section 514(a) of the Employee
20 Retirement Income Security Act of 1974 (“ERISA”).

21 **I. Background²**

22 This case concerns Defendant’s denial of benefits under an employee welfare
23 benefit plan (the “Plan”) governed by ERISA. (Doc. 1-3 at 4–16). Ms. Sadedra Johnson

24 ¹ The Court denies Plaintiff’s Motion for Default Judgment (Doc. 8) because Plaintiff did
25 not first obtain an entry of default from the Clerk of the Court under Rule 55(a). Defendant
26 also has not failed to plead or otherwise defend this action. *See* Fed. R. Civ. P. 55(a)
27 (“When a party against whom judgment for affirmative relief is sought has failed to plead
or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must
enter the party's default.”)

28 ² Unless otherwise noted, these facts are taken from Plaintiff’s Complaint (Doc. 1-3). The
Court will assume the Complaint’s factual allegations are true, as it must in evaluating a
motion to dismiss. *See Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001).

1 (“Johnson”) is insured by Defendant. Plaintiff is an out-of-network health care provider
2 for Johnson who provided anesthesia services to her. (*Id.* at 5). Plaintiff alleges Defendant
3 has failed to pay benefits under the Plan for these services. (*Id.*)

4 Plaintiff now brings breach of contract and unjust enrichment claims against
5 Defendant. (*Id.*) Plaintiff alleges he has “been appointed by the insured member Sadedra
6 Johnson as her Designated Representative for this collection action of a past due medical
7 payment.” (*Id.*) He claims Ms. Johnson “signed an Assignment of Benefits and a Power
8 of Attorney contract to allow the Designated Representative all rights under the United
9 HealthCare Plan policy, including appeal rights, direct payment collection rights,
10 disclosure access and litigation, have been transferred to the provider [Plaintiff] Dr. Gary
11 Wagoner.” (*Id.* at 6).

12 Defendant removed the case from the Maricopa County Justice Court, arguing that
13 the Court has original jurisdiction because ERISA governs this matter. (Doc. 1).
14 Defendant now moves to dismiss Plaintiff’s Complaint under Rule 12(b)(6), arguing
15 Plaintiff’s state law claims are preempted by Section 514(a) of ERISA. (Doc. 5).

16 **II. Legal Standard**

17 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a claim. *Cook*
18 *v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011). A claim that is preempted by federal law
19 fails to state a claim upon which relief can be granted under Rule 12(b)(6). *Stewart v. U.S.*
20 *Bancorp*, 297 F.3d 953, 957 (9th Cir. 2002) (motion to dismiss based on ERISA
21 preemption is a merits decision on the pleadings, not a motion to dismiss for lack of
22 jurisdiction).

23 **III. Discussion**

24 ERISA governs the administration of employee benefit plans and protects the
25 interests of plan participants and their beneficiaries with uniform guidelines and rules. 29
26 U.S.C. § 1001 *et seq.*, *Metropolitan Life Ins. Co. v. Parker*, 436 F.3d 1109, 1111 (9th Cir.
27 2006). Two ERISA preemption provisions defeat state-law causes of action: complete
28 preemption under Section 502(a), and conflict preemption under Section 514(a). *Aetna*

1 *Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). Defendant contends the latter provision,
 2 Section 514(a), preempts Plaintiff’s state law claims for breach of contract and unjust
 3 enrichment. Defendant also argues that even if Plaintiff were to bring an ERISA claim, he
 4 lacks standing to do so. The Court will address each of Defendant’s arguments in turn.

5 **A. Section 514(a) Preemption**

6 Section 514(a) provides that ERISA “supersede[s] any and all State laws insofar as
 7 they may . . . relate to any employee benefit plan.” § 1144(a). The issue is whether
 8 Plaintiff’s breach of contract and unjust enrichment claims relate to the Plan. A law “relates
 9 to” an employee benefit plan . . . if it has a “connection with” or “reference to” such a plan.
 10 *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96–97 (1983) (internal quotations omitted).
 11 Although separate prongs, Defendant lumps together the “reference to” and “connection
 12 with” an ERISA plan. (Doc. 5 at 5).

13 **a. “Reference to” ERISA Plan**

14 First, the Court must consider whether Plaintiff’s claims “reference to” an ERISA
 15 Plan. A state law demonstrates the forbidden “reference to” an ERISA plan when it [1]
 16 “acts immediately and exclusively upon ERISA plans . . . or [2] where the existence of
 17 ERISA plans is essential to the law’s operation.” *Cal. Div. of Labor Standards*
 18 *Enforcement v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 325 (1997). Defendant argues
 19 Plaintiff’s benefit coverage determination letter states the Plan’s administrator made its
 20 coverage decisions based on the terms of Ms. Johnson’s ERISA benefit plan. (*Id.*)
 21 Defendant thus contends that Plaintiff’s state law claims are preempted because his
 22 challenge to Defendant’s decision falls under the ERISA plan. (*Id.*) The Court disagrees.

23 Plaintiff’s state law claims are common law claims for breach of contract and unjust
 24 enrichment. (Doc. 1-3 at 4). These claims neither act “immediately and exclusively upon
 25 ERISA plans” nor do the claims rely on “the existence of ERISA plans” to operate. This
 26 is because the claims arise from “state law doctrines of general application.” *Arizona State*
 27 *Carpenters Pension Trust Fund v. Citibank (Arizona)*, 125 F.3d 715, 724 (9th Cir.1997).
 28 Plaintiff’s state law claims therefore survive the “reference to” preemption prong of

1 Section 514(a). *See Blue Cross of California Inc. v. Insys Therapeutics Inc.*, 390 F. Supp.
 2 3d 996, 1004 (D. Ariz. 2019) (finding plaintiff's unjust enrichment claim was not
 3 preempted under Section 514(a) because it arose from state law doctrines of general
 4 application); *Nationwide DME, LLC v. Cigna Health & Life Ins. Co.*, 136 F. Supp. 3d 1079,
 5 1085 (D. Ariz. 2015) (same finding as to plaintiff's breach of contract claim).

6 **b. "Connection with" ERISA Plan**

7 Next, the Court must consider whether Plaintiff's claims have a "connection with"
 8 an ERISA Plan. To determine whether a state law has a "connection with" an ERISA plan,
 9 the Ninth Circuit applies a "relationship test" under which "a state law claim is preempted
 10 when the claim bears on an ERISA-regulated relationship, e.g., the relationship between
 11 plan and plan member, between plan and employer, between employer and employee."
 12 *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1082 (9th Cir. 2009).

13 As discussed, Defendant argues Plaintiff's benefit coverage determination letter
 14 states the Plan's administrator made its coverage decisions based on the terms of Ms.
 15 Johnson's ERISA benefit plan and thus contends Plaintiff's state law claims bear on an
 16 ERISA-regulated relationship and are preempted. (Doc. 5 at 5). Under the relationship
 17 test, the Court agrees. Plaintiff is acting as the assignee of Ms. Johnson's claims under her
 18 ERISA plan. (Doc. 1-3 at 69–70). Plaintiff's actions will therefore have an impact on an
 19 ERISA-regulated relationship, namely the plan and plan member. Plaintiff's state law
 20 claims are thus preempted under the "connection with" prong of Section 514(a).

21 Although Plaintiff's state law claims are preempted by Section 514(a), this does not
 22 mean Plaintiff is without recourse. Plaintiff's current Complaint does not appear to allege
 23 an ERISA claim. (Doc. 1-3). Plaintiff may therefore seek leave to file an amended
 24 complaint to do so under 29 U.S.C. § 1132(a)(1)(B). *See* 29 U.S.C. § 1132(a)(1)(B)
 25 (certain parties with an interest in an ERISA plan may bring a civil action "to recover
 26 benefits due to [them] under the terms of his plan, to enforce [their] rights under the terms
 27 of the plan, or to clarify [their] rights to future benefits under the terms of the plan"); *see*
 28 *also* Fed. R. Civ. P. 15(a) (leave to amend "shall be freely given when justice so requires").

1 **B. Article III Standing**

2 Defendant preemptively argues in a footnote that even if Plaintiff brings an ERISA
3 claim, he lacks standing to pursue it because Johnson’s Plan contains an anti-assignment
4 provision which precludes Johnson from assigning her benefits under the Plan to an out-
5 of-network provider without Defendant’s written consent.³ (Doc. 5 at 5 n.3).

6 Article III of the Constitution establishes that federal courts may only hear cases or
7 controversies. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 559 (1992). To satisfy this
8 constitutional requirement, a plaintiff must have suffered a concrete and particularized
9 injury that is both fairly traceable to the defendant’s conduct and redressable by a favorable
10 decision. *Id.* at 560–61.

11 A party has standing to bring an ERISA claim if he is one of the identified parties
12 in ERISA’s civil enforcement provisions. *Spinedex Physical Therapy USA Inc. v. United*
13 *Healthcare of Arizona, Inc.*, 770 F.3d 1282, 1288 (9th Cir. 2014). “ERISA’s civil
14 enforcement provision . . . identifies only plan participants, beneficiaries, fiduciaries, and
15 the Secretary of Labor as ‘[p]ersons empowered to bring a civil action.’” 29 U.S.C. §
16 1132(a); *Id.* at 1288–89 (quoting *Misic v. Bldg. Serv. Emps. Health & Welfare Trust*, 789
17 F.2d 1374, 1378 (9th Cir.1986)). Non-participant health care providers may not bring
18 claims for benefits on their own behalf. *Id.* at 1289. This is because health care providers
19 are not beneficiaries within the meaning of § 502(a). *DB Healthcare, LLC v. Blue Cross*
20 *Blue Shield of Arizona, Inc.*, 852 F.3d 868, 876 (9th Cir. 2017).

21 On the other hand, health care providers, such as the Plaintiff here, may pursue an
22 ERISA claim provided that a patient has assigned the provider its benefits claim. *Spinedex*,
23 770 F.3d at 1289. But if an ERISA plan contains an anti-assignment clause, then a patient
24 may not assign a claim. *Id.* at 1296 (“Anti-assignment clauses in ERISA plans are valid
25 and enforceable.”).

26 Here, Plaintiff has provided sufficient evidence that Johnson assigned the Plan to

27 ³ Defendant further states that “the Court need not address that issue for purposes of
28 deciding this motion and finding that Plaintiff’s claims are conflict preempted under
Section 514(a) of ERISA.” (*Id.*)

1 him under 12(b)(6) standards. (Doc. 1-3 at 69–70). Defendant, on the other hand, fails to
2 cite to the Plan’s anti-assignment provision. (Doc. 5 at 5 n.3). If the Plan contains such a
3 provision, Plaintiff should be prepared to articulate how he can bring an ERISA claim
4 against Defendant on behalf of Ms. Johnson. In other words, for Plaintiff to bring an
5 ERISA claim, he must prove he is a valid assignee and there is no anti-assignment clause
6 in the Plan. *See Spinedex*, 770 F.3d at 1288–89 (stating that only a plan participant,
7 beneficiary, fiduciary, or valid assignee is the injured party and may bring an ERISA
8 claim).


9 Accordingly,

10 **IT IS HEREBY ORDERED** that Defendant’s Motion to Dismiss (Doc. 5) is
11 **granted**.

12 **IT IS FURTHER ORDERED** that Plaintiff’s Motion for Default Judgment (Doc.
13 8) is **denied**.

14 **IT IS FINALLY ORDERED** that Plaintiff may file a motion seeking leave to file
15 an amended complaint no later than **fourteen (14) days** after the entry of this Order. If
16 Plaintiff does not seek leave to file an amended complaint by **February 27, 2023**, the Clerk
17 of Court shall dismiss this action without further order of this Court.

18 Dated this 13th day of February, 2023.

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22 Honorable Diane J. Humetewa
23 United States District Judge
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